

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 4154 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE R.BALIA. and
MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KANUBHAI JASHBHAI PATEL

Versus

UNION OF INDIA

Appearance:

MR SN SOPARKAR for Petitioner

MR B.B.NAIK WITH M.R.BHATT, FOR Respondent No. 1

CORAM : MR.JUSTICE R.BALIA. and

MR.JUSTICE A.R.DAVE

Date of decision: 26/11/98

ORAL JUDGEMENT

Per Balia, J.

The petitioner challenges the order of the appropriate authority under section 269UD of the Income tax Act to the extent it reduces the amount of consideration to be paid to the transferee under section 269UF (1) read with section 269UA (b) by deducting the amount of apparent consideration as disclosed in the agreement to sell. The

amount of discount on deferred payment as prescribed under rule 48-L and a sum of Rs. 2,65,745/-, 50% of the stamp duty and registration charges which would have been payable by the petitioner -transferor had the sale taken place in accordance with the agreement to sell in the absence of exercise of right to purchase property for the Union of India.

The learned advocate for the petitioner urges that he is entitled to full consideration equivalent to apparent consideration disclosed in the agreement to sell and the appropriate authority is not justified in law to reduce the amount on the grounds stated in the order.

When the matter came up for hearing, it was candidly stated by the learned counsel for the petitioner that so far as this court is concerned, the controversy has been set at rest by series of decisions in-

(I) Pradip Ramanlawl Sheth vs. Union of India, 204 ITR 866;

(II) Shantaben Ratilal vs, Appropriate authority, 212 ITR ,95 and

(III) Sanjay Chandrakant Raval vs. Union of India, 219 ITR 748.

The court has taken the view that where whole or any part of the consideration referred to in the agreement for transfer is payable on any date or dates falling after the date of such agreement for transfer, the value of the consideration payable after such date shall be deemed to be the discounted value of such consideration as on the date of such agreement for transfer, determined by adopting such rate of interest as may be prescribed in this behalf. The court has further taken the view that the expenses of the conveyance were to be borne by the transferor only in case where they were required to be actually incurred and not otherwise. Where the property vested in the Central Government by virtue of the provisions of chapter XX-C on making an order under section 269UD and no expense was to be incurred for the purpose of conveying the property, no liability on account of conveyance expenses arises to be borne by the transferor which can result in reduction of real consideration. The court was of the view that liability in respect of stamp duty arises only on the execution of the requisite deed of conveyance and registration charges become payable only when the document is presented for registration before the appropriate authority. No such

liability comes into existence merely on the execution of the agreement to sell. In the event ,no such document is required to be executed and registered, no occasion for incurring such expenses arises. There is no provision under the statute for deducting any sum from the apparent consideration except the adjustment to be made for arriving at the discounted value of the apparent consideration, which alone is to be treated as consideration under section 269UD and no other adjustment is permissible on general principle by assuming what net amount will be left with the vendor after incurring expenses for conveyance in case such conveyance ultimately comes into existence.

Following the aforesaid decisions, we hold that so far as the appropriate authority under the impugned order has discounted the apparent consideration on account of deferred payment, there is no error much less error apparent on the face of record which is liable to be corrected, by issue of writ of certiorari.

However, something cannot be said about deductions considered by the appropriate authority on account of assumed liability of stamp duty and registration charges that would have come into existence to the extent of Rs. 2,65,745/-. To this extent, the orders suffers from an error apparent on the face of record which needs to be correct.

Accordingly, the petition is partly allowed. The impugned order dated 26.11.1990 is quashed to the extent it reduces the consideration to be paid to the petitioner by Rs. 2,65,745/- on account of stamp duty and registration charges that may have to be borne by the petitioner in case the sale deed in accordance with agreement to sell would have been executed and direct the respondents to pay the said amount if not already paid alongwith interest at the rate of 12% from the date the consideration became payable that is to say- 31.12.1990 under the order in question , till the amount is actually paid to the petitioner, the respondents shall make the aforesaid payment by 31.1.199.

Rule is made absolute as above. There shall be no order as to costs.

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